

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

LEGALFORCE RAPC WORLDWIDE, P.C.,)	C-22-03724 TLT
)	
PLAINTIFF,)	SAN FRANCISCO, CALIFORNIA
)	
VS.)	OCTOBER 3, 2023
)	
LEGALFORCE, INC.,)	PAGES 1-32
)	
DEFENDANT.)	
)	
<hr/> LEGALFORCE RAPC WORLDWIDE, P.C.,)	C-22-07627 TNT
)	
PLAINTIFF,)	
)	
VS.)	
)	
LEGALON TECHNOLOGIES, INC., A DELAWARE CORPORATION,)	
)	
DEFENDANT.)	
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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE TRINA L. THOMPSON
UNITED STATES DISTRICT JUDGE

APPEARANCES ON NEXT PAGE

REMOTEY REPORTED BY: LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S:

FOR THE PLAINTIFFS: RAJ ABHYANKER, PC
 BY: RAJ V. ABHYANKER
 1580 W. EL CAMINO REAL, SUITE 10
 MOUNTAIN VIEW, CALIFORNIA 94040

FOR THE DEFENDANTS: LAW OFFICES OF DAVID A. MAKMAN
 BY: DAVID A. MAKMAN
 483 SEAPORT COURT, SUITE 103
 REDWOOD CITY, CALIFORNIA 94063

1 SAN FRANCISCO, CALIFORNIA

OCTOBER 3, 2023

2 P R O C E E D I N G S

3 (COURT CONVENED AT 2:05 P.M.)

4 THE COURT: THANK YOU. YOU MAY BE SEATED UNLESS
5 YOU'RE SOMEONE WHO'S PRESENTING AND CALLED TO COUNSEL'S TABLE.
6 THANK YOU.

7 WHICH ONE ARE YOU GOING TO START WITH?

8 THE CLERK: NOW CALLING CASE NUMBERS 22-CV-03724,
9 LEGALFORCE RAPC WORLDWIDE, P.C. VERSUS LEGALFORCE, INC., AND
10 CASE NUMBER 22-CV-07627, LEGALFORCE RAPC WORLDWIDE, P.C. VERSUS
11 LEGALON TECHNOLOGIES, INCORPORATED.

12 COUNSEL, IF YOU COULD PLEASE STATE YOUR APPEARANCES,
13 BEGINNING WITH THE PLAINTIFF.

14 MR. ABHYANKER: RAJ ABHYANKER FOR THE PLAINTIFF,
15 LEGALFORCE RAPC WORLDWIDE, P.C.

16 THE COURT: GOOD AFTERNOON. PLEASURE TO SEE YOU
17 AGAIN.

18 MR. MAKMAN: GOOD AFTERNOON, YOUR HONOR.

19 MY NAME IS DAVID MAKMAN. I'M HERE ON BEHALF OF
20 DEFENDANTS.

21 THE COURT: PLEASURE TO SEE YOU AS WELL.

22 ALL RIGHT, COUNSEL. AS A COURTESY, THE COURT PROVIDED A
23 NUMBER OF MY QUESTIONS IN ADVANCE BECAUSE WE HAVE TO BE VERY
24 MINDFUL OF THE TIME. WE HAVE ONE OTHER CASE IN ADDITION TO THE
25 TWO LEGALFORCE CASES THAT ARE BEFORE ME.

1 AND I ALSO DID THIS BECAUSE I DIDN'T WANT TO INTERRUPT
2 YOUR PREPARATION IN TERMS OF HOW YOU WOULD LIKE TO PRESENT THE
3 CASE.

4 SO WE'RE GOING TO START WITH THE DEFENDANT, BECAUSE I DO
5 HAVE ONE QUESTION THAT MAY NOT HAVE BEEN IN YOUR LIST OF
6 QUESTIONS, AND ONE QUESTION I HAVE IS, DO YOU CHALLENGE THE
7 ACCURACY OF MR. TADA'S TRANSLATION OF JAPANESE ARTICLES AND
8 PRESS RELEASES USED TO SUPPORT PLAINTIFF'S OPPOSITION?

9 MR. MAKMAN: I HAVE NOT GONE OVER THAT IN DETAIL. I
10 AM AWARE OF SOME ERRORS IN IT. SO, I MEAN, IT WOULD DEPEND ON
11 WHICH, WHICH LANGUAGE.

12 THERE IS -- MY RECOLLECTION IS THERE'S A STATEMENT IN
13 THERE THAT I READ THE JAPANESE AS SAYING THAT THERE'S NO --
14 NOBODY IN THE MARKET, AND THAT'S NOT HOW IT WAS TRANSLATED.

15 THE COURT: ALL RIGHT. BECAUSE HE CLAIMED THAT
16 THE -- TO TRANSLATE THE ARTICLES -- HE CLAIMED TO TRANSLATE THE
17 ARTICLES, BUT THERE WAS NO CERTIFIED TRANSLATION, SO THAT'S WHY
18 I'M ASKING THAT PARTICULAR QUESTION.

19 ALL RIGHT. COUNSEL, IF YOU WOULD LIKE TO RESPOND IN
20 OPPOSITION, AND THEN WE'LL RETURN OUR ATTENTION TO THE
21 DEFENDANT.

22 MR. ABHYANKER: THANK YOU, YOUR HONOR.

23 SO YOU RAISED THREE QUESTIONS FOR US YESTERDAY. WE DIDN'T
24 HAVE TIME TO FULLY DO THE CASE RESEARCH, AND I REALIZE THAT THE
25 ORDER YESTERDAY, AROUND 4:00 P.M., SAID THAT WE HAD TO SUBMIT

1 THOSE CASE LAW 48 HOURS BEFORE THE HEARING, SO THERE WAS NOT
2 ENOUGH TIME.

3 THE COURT: YES, I APOLOGIZE FOR THAT. THE WORDING
4 WAS PROBABLY IN ERROR.

5 BUT IT WAS REALLY TO ALERT YOU TO SOME AREAS WHERE WE
6 THOUGHT THAT THERE WERE SOME GAPS IN THE BRIEFING, AND THIS
7 WILL ASSIST ME IN MAKING A MORE INFORMED DECISION. SOME OF
8 THESE QUESTIONS MAY NOT BE NEW, SOME OF THESE QUESTIONS ARE
9 REVISITED, SO IF YOU CAN INCORPORATE THEM INTO YOUR RESPONSE.

10 AND I APOLOGIZE FOR ANY DISCREPANCY IN THE ORDER ITSELF.

11 MR. ABHYANKER: THAT'S ALL RIGHT, YOUR HONOR.

12 SO, FIRST OF ALL, I'LL START WITH ANSWERING THE COURT'S
13 FIRST QUESTION, WHICH WAS THE LEGAL AUTHORITY FOR THE ASSERTION
14 THAT ADVERTISING OR SELLING EQUITY IN PRIVATE COMPANIES IS
15 CONSIDERED A USE IN COMMERCE UNDER THE LANHAM ACT.

16 SO, FIRSTLY, I DON'T THINK THERE'S ANY DEFINITE CASE LAW
17 ON THE ISSUE, SO WE ADMIT THAT. THE AVAILABLE CASE LAW THAT WE
18 DID FIND LEADS ONE TO BELIEVE THAT IT DOES, AND THE PREDICATE
19 OF THAT IS 15 U.S.C. 1127, WHICH DEFINES "USE IN COMMERCE" AS
20 THE BONA FIDE USE OF A TRADEMARK IN THE ORDINARY COURSE OF
21 TRADE AND NOT MERELY A RESERVATION OF THAT RIGHT IN A MARK.

22 THE STATUTE DOESN'T SPECIFY WHETHER THE DEFINITION APPLIES
23 TO TRADEMARKS FOR GOODS OR SERVICES. THE COURTS HAVE
24 INTERPRETED IT TO APPLY TO BOTH, AS WELL AS OTHER INTANGIBLE
25 MATTERS, SUCH AS WHICH CAN'T BE HELD OR SEEN AS NORMAL

1 SERVICES, AND PROBABLY THAT'S WHEN THAT STATUTE WAS
2 PROMULGATED.

3 SO SEVERAL REASONS WHY ADVERTISING AND SELLING EQUITY IN A
4 PRIVATE COMPANY COULD BE CONSIDERED USE IN COMMERCE UNDER THE
5 LANHAM ACT. FIRST, ADVERTISING AND SELLING EQUITY IS A
6 COMMERCIAL ACTIVITY. COMPANIES THAT ADVERTISE OR SELL EQUITY
7 SEEK TO RAISE MONEY FROM INVESTORS IN ORDER TO GROW THEIR
8 BUSINESS. IT'S CLEAR THAT, JUST BASED ON THAT ALONE, IT'S A
9 CLEAR EXAMPLE OF THE BONA FIDE USE OF A TRADEMARK IN THE
10 ORDINARY COURSE OF TRADE, WHICH IS THE DEFINITION UNDER
11 15 U.S.C. 1127.

12 SECONDLY --

13 THE REPORTER: I'M SORRY, COUNSEL. CAN YOU RESTATE
14 THAT, PLEASE?

15 THE COURT: OUR COURT REPORTER IS REMOTE, AND SO
16 DON'T BE ALARMED BY THE VOICE.

17 BUT IF YOU CAN, MAKE SURE THAT YOU'RE SPEAKING INTO THE
18 MICROPHONE. I ALWAYS SAY, CONSIDER YOURSELF A ROCK STAR FOR A
19 DAY. AND SLOW DOWN, BECAUSE EVEN THOUGH SHE'S REMOTE, I CAN
20 SEE THE SMOKE IN THE BACKGROUND FROM HER FINGERS.

21 SO IF YOU CAN JUST SLOW DOWN JUST A LITTLE BIT.

22 MR. ABHYANKER: YES, YOUR HONOR.

23 SECOND, THE ADVERTISING OR SALE OF EQUITY CAN CREATE
24 PUBLIC ASSOCIATION BETWEEN A COMPANY'S MARK AND ITS GOODS AND
25 SERVICES. FOR EXAMPLE, IF A PRIVATE COMPANY LIKE THE

1 DEFENDANT, WHICH SELLS SOFTWARE TO ADVERTISE EQUITY INVESTORS,
2 INVESTORS MAY COME TO ASSOCIATE THE COMPANY'S TRADEMARK WITH
3 ITS SOFTWARE AND SERVICES.

4 THAT ASSOCIATION CAN LEAD TO CONFUSION AMONG CONSUMERS WHO
5 MAY BELIEVE THAT THE COMPANY'S TRADEMARKS ARE AFFILIATED WITH
6 THE GOODS AND SERVICES THEY'RE NOT.

7 THEY'VE ALREADY SAID, AS WE MENTIONED IN OUR COMPLAINT AS
8 AMENDED, THAT THE PRODUCT NAMES HAVE NOT CHANGED FOR THIS
9 DEFENDANT. THEY CONTINUE TO BE CALLED LEGALFORCE.

10 THIRD, THE ADVERTISING OR SALE OF EQUITY CAN DILUTE THE
11 VALUE OF A TRADEMARK, WHICH IS OUR, OUR MARK. AND ALTHOUGH WE
12 HAVEN'T CLAIMED DAMAGES FOR DILUTION, WE BELIEVE WE HAVE A
13 SIGNIFICANTLY IMPORTANT MARK WHICH RESERVES BRAND EQUITY TO US
14 THROUGH OUR INVESTMENT IN THAT MARK.

15 THE COURT: ALL RIGHT. CAN I INTERRUPT FOR JUST A
16 MOMENT? AND KEEP IN MIND, EACH SIDE HAS 15 MINUTES.

17 WHAT SPECIFIC HARM DID PLAINTIFF EXPERIENCE BECAUSE OF THE
18 DEFENDANT'S ALLEGED INFRINGEMENT?

19 MR. ABHYANKER: YEAH. SO WE BELIEVE THAT THE HARM
20 THAT WE'VE EXPERIENCED IS THAT WE HAVE A WEAKER ASSOCIATION
21 BETWEEN OUR GOODS AND SERVICES AND OUR BRAND AS A RESULT OF
22 THEIR USE OF THE SOFTWARE. WE HAVE BASICALLY LOST CONTROL OF
23 OUR OWN REPUTATION. WE'VE ALLEGED THAT THE DEFENDANT IS
24 ENGAGED IN ACTIVITY, EITHER UNLAWFUL OR UNETHICAL, AND THAT
25 BRAND PRODUCT CONTINUES TO BE CALLED LEGALFORCE.

1 AND WHILE THAT CONTINUES TO BE CALLED LEGALFORCE TO
2 PROMOTE ITS OWN PRODUCTS AND SERVICES, IT CAN DAMAGE -- IT DOES
3 DAMAGE OUR BRAND VALUE.

4 AND THEY'RE IN A COMPETING INDUSTRY.

5 THE COURT: AND HOW DOES IT DAMAGE THE BRAND VALUE?
6 I GUESS I'M TRYING TO GET AS TANGIBLE AS I CAN.

7 MR. ABHYANKER: TO CALCULATE THE EXTENT OF THE BRAND
8 VALUE, WE'D NEED EXPERTS.

9 BUT ONE CAN SAY THAT A COMPANY WHO'S USING ANOTHER'S MARK
10 IN A MANNER WHICH IS UNLAWFUL OR UNETHICAL, ACCORDING TO THE
11 PLAINTIFF, WILL DAMAGE THE BRAND VALUE OF THE PLAINTIFF'S MARK.

12 NOW, IT'S -- IT GIVES THEM AN UNFAIR ADVANTAGE,
13 FURTHERMORE.

14 WE'VE ALSO ALLEGED THAT, YOU KNOW, WE WERE SEEKING THE
15 SIMILAR KIND OF VENTURE CAPITAL FUNDS IN 2022. WHEN WE GO OUT
16 TO THE PRIVATE MARKETS TO SEEK VENTURE CAPITAL, WE WILL NOW BE
17 DISADVANTAGED AS OUR BRAND HAS BEEN ASSOCIATED WITH AN ENTITY
18 THAT RAISED MONEY WITH THAT VERY SAME BRAND WHICH WE ALLEGE IS
19 DOING THINGS WHICH ARE AGAINST THE RULES.

20 THE COURT: NOW, IS THIS SPECULATIVE OR ACTUAL?

21 MR. ABHYANKER: THESE ARE ACTUAL ISSUES.

22 AND SINCE 2023 TO 2024, THE MARKET FOR PRIVATE INVESTMENTS
23 HAS CHANGED. THE VALUATIONS HAVE CHANGED.

24 WE'VE PERMANENTLY SUFFERED THAT HARM TODAY. AND IT'S NOT
25 A HARM THAT WE CAN JUST SIT HERE AND GUESS AND PUT A NUMBER ON,

1 BUT IT IS A REAL HARM, AND IT IS ONE THAT EXPERTS CAN HELP US
2 CALCULATE THE TRUE VALUE OF.

3 THE COURT: ALL RIGHT. IS THERE ANY LEGAL SUPPORT OR
4 AUTHORITY FOR SPECIFIC JURISDICTION RELATED TO FILING A
5 TRADEMARK OR OPERATING A FOREIGN WEBSITE?

6 MR. ABHYANKER: SO THE CASE LAW, AGAIN, IS NOT VERY
7 CLEAR ON THE ISSUE, ADMITTEDLY, AND WE WOULD LIKE TO RESERVE
8 AND HAVE A FINAL ORDER FOR APPEAL BECAUSE WE WILL BE APPEALING
9 THIS TO THE NINTH CIRCUIT.

10 HOWEVER, THE SPECIFIC ARGUMENT OF THIS IS BASED ON THE
11 INTENT TO USE TRADEMARK IS A COMMERCIAL ACTIVITY THAT'S
12 DIRECTED TO THE U.S. MARKET.

13 THERE IS CASE LAW, WHICH WE'RE NOT GOING TO ARGUE NOW
14 BECAUSE WE DIDN'T GIVE THE DEFENDANT NOTICE GIVEN THE ORDER WAS
15 UNCLEAR ON THAT, WHICH SAYS THAT AN INTENT TO USE A MARK IS A
16 BONA FIDE REPRESENTATION TO THE GOVERNMENT THAT THEY INTEND TO
17 USE THE TRADEMARK WITHIN THE UNITED STATES.

18 THAT CREATES A SUFFICIENT CONNECTION BETWEEN THE DEFENDANT
19 AND THE UNITED STATES TO JUSTIFY SPECIFIC JURISDICTION.

20 THEY'VE THEREFORE PURPOSELY AVAILED THEMSELVES IN VIEW OF THE
21 FACT THAT THEY'RE CONDUCTING A COMMERCIAL ACTIVITY IN THE
22 UNITED STATES WITH A DECLARATION, WHICH IS UNDER OATH, OR A
23 SWORN STATEMENT THAT'S UNDER OATH TO THE U.S. GOVERNMENT, WHICH
24 EITHER IS TRUE OR IT'S FALSE.

25 IN EITHER CASE, IT IS A -- IF THEY LIED TO THE U.S. PTO IN

1 A VERIFIED STATEMENT OR DECLARATION, THEY PURPOSELY AVOIDED
2 THEMSELVES; OR IF THEY WERE TRUTHFUL THAT THEY REALLY INTENDED
3 TO USE THE MARK IN THE UNITED STATES, THEY'VE ALSO AVOIDED
4 THEMSELVES.

5 SO TO THE EXTENT THAT THE FILING OF A TRADEMARK IS A SWORN
6 STATEMENT TO THE GOVERNMENT WHICH PROVIDES THE JUSTIFICATION
7 FOR BONA FIDE INTENT TO USE, WE BELIEVE THAT CONNECTION IS
8 FORMED TO THE U.S. THROUGH THAT MECHANISM.

9 THE COURT: ALL RIGHT.

10 I HAVE A COUPLE MORE QUESTIONS AND THEN I'M GOING TO TURN
11 MY ATTENTION TO THE DEFENSE.

12 DO YOU HAVE ANY LEGAL SUPPORT FOR YOUR ASSERTION THAT
13 ADVERTISING OR SELLING EQUITY IN A PRIVATE COMPANY QUALIFIES AS
14 A USE IN COMMERCE UNDER THE LANHAM ACT?

15 MR. ABHYANKER: SO, YOUR HONOR, WE'VE CITED A NUMBER
16 OF CASES THAT ARE, AGAIN, NOT EXACTLY ON POINT, BUT CLOSE,
17 WHICH DEAL WITH STOCK TICKERS, AND THOSE STOCK TICKER CASES
18 THAT WE'VE CITED IN OUR BRIEF IN A RELATED CASE, NOT IN THIS
19 CASE, BUT IN THE RELATED CASE WITH LEGALON TECHNOLOGIES, THE
20 U.S. ENTITY, WE'VE CITED A NUMBER OF THOSE CASES WHICH I WOULD
21 INCORPORATE BY REFERENCE.

22 BUT IN ESSENCE WHAT THEY SAY IS A COMPANY THAT DECIDES TO
23 USE A STOCK TICKER SYMBOL TO ADVERTISE ITS STOCK FOR SALE IN
24 SOME CASES CAN INFLUENCE A TRADEMARK.

25 NOW, CERTAINLY THE ITEM THAT'S BEING SOLD IS INTANGIBLE.

1 THE ITEM THAT'S BEING SOLD AND TRANSACTED THROUGH THE USE OF
2 THAT BRAND AND STOCK TICKER IS AN EQUITY, AND THAT EQUITY IS IN
3 A CORPORATION.

4 SO THE ADVERTISEMENT OCCURS THROUGH NASDAQ, WHICH DEFINES
5 WHERE THOSE STOCK TICKERS ARE PUBLISHED, AND THEREFORE, THE
6 SAME CASE LAW CAN BE USED HERE.

7 NOW, THE ARGUMENT THAT THEY MAKE IS SOME OF THEIR MARKS
8 ARE FAMOUS AND THEREFORE THEY'RE SOMEHOW DISTINGUISHED.

9 I DON'T THINK THAT HAS ANYTHING TO DO WITH DILUTION.
10 DILUTION OF THE MARK AND LIKELY CONFUSION ARE TWO SEPARATE
11 THINGS.

12 WE HAVE ALLEGED THAT, DESPITE OUR MARK NOT BEING FAMOUS,
13 WE DON'T BELIEVE ALL THOSE OTHER MARKS -- THE DECISIONS THAT
14 HELD THAT THOSE STOCK TICKERS COULD BE RELATED TO ADVERTISING
15 THE EQUITIES AND THEREFORE INFRINGING IS AN INDEPENDENT ISSUE
16 FROM THE FAME OF THOSE MARKS.

17 AND THAT IS THE CLOSEST ANALOGY WE HAVE, AND IF WE NEED TO
18 GO TO THE NINTH CIRCUIT TO RESOLVE THAT, WE WILL.

19 THE COURT: OKAY. THANK YOU.

20 NOW, TWO MORE QUESTIONS, PERHAPS THREE, TO COUNSEL, AND
21 THEN CLEARLY I'M GOING TO TURN MY ATTENTION TO DEFENSE, BECAUSE
22 AS WE'RE TALKING, OTHER QUESTIONS KIND OF ARE ARISING.

23 YOU APPARENTLY HEARD THAT DEFENDANT CURRENTLY MARKETS ITS
24 PRODUCT IN THE UNITED STATES, AND YOU CITE TO EXHIBIT 1 OF YOUR
25 DECLARATION. WHERE IN THIS PRESS RELEASE DOES IT STATE THAT

1 THE DEFENDANT LEGALFORCE IS MARKETING ITS PRODUCTS IN THE
2 UNITED STATES?

3 MR. ABHYANKER: OKAY. SO I NEED TO REVIEW THE TIME
4 AND DATE OF THAT DECLARATION.

5 THE COURT: OKAY.

6 MR. ABHYANKER: AND I WOULD NEED TO -- SO WHEN I SIT
7 HERE TODAY, I DON'T BELIEVE THE BUSINESS THAT IS THE DEFENDANT
8 IN THIS CASE IS OPERATING IN THE UNITED STATES DIRECTLY.

9 AT THE TIME OF THE DECLARATION, AT THE TIME OF THIS
10 LAWSUIT, THEY HAD NOT YET CHANGED THEIR NAME TO LEGALON. THEY
11 HAD NOT YET CHANGED OR REMOVED ANY OF THEIR STOCK -- THEIR
12 TRADEMARK VIOLATIONS. THEY WERE CALLED LEGALFORCE.

13 AND SO IN HINDSIGHT, I CAN'T GO BACK AND SAY -- I DO NOT
14 BELIEVE, YOUR HONOR, TODAY THEY'RE USING THE MARK.

15 THE COURT: UM-HUM.

16 MR. ABHYANKER: BUT THAT'S NOT SUFFICIENT TO WARRANT
17 THIS CASE FOR DISMISSAL. THEY STILL OWE US DAMAGE FOR THE HARM
18 THEY'VE DONE AND CAUSED AS A RESULT OF THEIR PRIOR CONFUSION OF
19 SOURCE ORIGIN THAT THEY HAVE CREATED IN OUR BUSINESSES.

20 THE COURT: ALL RIGHT. AND WHEN WE GO BACK TO THE
21 DISCUSSION ABOUT HARM, THAT LEADS ME BACK TO THAT QUESTION OF
22 CAN YOU PROVIDE MORE INFORMATION ABOUT THE SPECIFIC INJURY THAT
23 YOU SUFFERED UNDER THE LANHAM ACT?

24 MR. ABHYANKER: YOUR HONOR, I DON'T THINK THAT IN
25 CASES SUCH AS THIS LITIGATION WE HAVE TO ALLEGE AND QUANTIFY

1 THE HARM AT THE ONSET OF A DISPUTE. WE HAVE TO ALLEGE THAT WE
2 HAVE SUFFERED HARM, AND WE HAVE SUFFERED HARM, AND IT CAN BE
3 UNDERSTOOD -- IT'S VERY RARE, IN FACT, IN TRADEMARK CASES TO
4 SOME -- FOR A PLAINTIFF TO BE ASKED AND REQUIRED TO QUANTIFY
5 ALL THE HARM IT SUFFERED. WE DON'T HAVE ALL THE FACTS AND WE
6 HAVEN'T YET CONDUCTED THE FULL DISCOVERY.

7 SO I DON'T KNOW, BUT I DON'T THINK THAT'S UNUSUAL IN CASES
8 LIKE THIS.

9 THE COURT: ALL RIGHT. AND WHILE I'M ADDRESSING THE
10 DEFENSE, PLEASE GIVE SOME THOUGHT TO THE EXHIBITS THAT HAVE
11 BEEN PROVIDED IN SUPPORT OF THE DEFENSE ARGUMENT RELATED TO
12 SUBJECT MATTER AND PERSONAL JURISDICTION AND WHETHER YOU HAVE A
13 RESPONSE TO ANY OF THE PROFFERED EVIDENCE.

14 ALL RIGHT. COUNSEL FOR THE DEFENDANT?

15 MR. MAKMAN: SURE.

16 SO, BIG PICTURE, THIS IS A PLAINTIFF THAT HAS NOT BEEN
17 HARMED, AND YOU'VE ADDRESSED THAT DIRECTLY IN YOUR QUESTIONS,
18 AND IT'S DIRECTLY RELEVANT, AT LEAST FOR LEGALFORCE, FOR THE
19 JAPANESE COMPANY NOW CALLED LEGALON, LEGALON JAPAN, DIRECTLY
20 RELEVANT TO MINIMUM CONTACTS WHETHER THERE'S HARM.

21 THAT'S IN THE CALDER CASE WHICH WAS CITED IN OUR -- THE
22 FIRST MOTION -- THE FIRST AMENDED COMPLAINT. IT'S VERY CLEAR
23 THAT FOR SPECIFIC JURISDICTION, YOU HAVE TO TIE A HARM TO THE
24 FORUM STATE.

25 IN THAT CONTEXT, PLAINTIFF HAS ALLEGED TWO CAUSES OF

1 ACTION THAT ARE FEDERAL. BOTH ARE FOR TRADEMARK INFRINGEMENT.
2 BOTH USE STATUTES THAT REQUIRE THE USE OF A MARK ON GOODS AND
3 SERVICES.

4 TRADEMARK IS TO PREVENT LIKELIHOOD OF CONFUSION, PREVENT
5 CONFUSION OF CONSUMERS WHO ARE BUYING GOODS AND SERVICES.
6 BUYING GOODS AND SERVICES IS TRADING.

7 BUYING STOCKS IS MORE LIKE FINANCE, AND I'LL DRILL DOWN ON
8 THAT.

9 BUT -- SO UNDER BOTH OF THE STATUTES, USE IN COMMERCE ON
10 GOODS AND SERVICES, AND IF THAT DOESN'T HAPPEN, HE'S NOT
11 HARMED.

12 NOW, YOU'VE ASKED ABOUT FILING AN APPLICATION, WHETHER
13 THAT CREATES JURISDICTION, AND THAT'S ACTUALLY A FAIRLY
14 COMPLICATED ISSUE. I CAN TALK ABOUT IT IN THE ABSTRACT. I
15 HAVEN'T DONE THE CASE LAW RESEARCH IN DETAIL. BUT IF YOU FILE
16 TO USE THE APPLICATION, YOU CANNOT REGISTER YOUR TRADEMARK AND,
17 THEREFORE, DO NOT HAVE RIGHTS OUTSIDE THE PATENT OFFICE UNTIL
18 YOU USE THE MARK.

19 WE FILED AN INTENT TO USE AND WE ABANDONED IT, AND SO WE
20 DIDN'T USE IT AND WE DIDN'T GET TRADEMARK RIGHTS.

21 SO AT THAT STAGE, WE HAVE NOT CREATED JURISDICTION
22 ANYWHERE IN THE UNITED STATES OTHER THAN AT THE TRADEMARK
23 OFFICE, AND THERE'S A SPECIAL STATUTE -- AT LEAST IN PATENT
24 CASES, I ASSUME IT ALSO EXISTS IN TRADEMARK CASES -- THAT SAYS
25 WHERE YOU'RE DEALING WITH SOMEBODY WHO HAS AN INTELLECTUAL

1 PROPERTY RIGHT GRANTED BY THE U.S. PATENT AND TRADEMARK OFFICE,
2 YOU HAVE JURISDICTION AND VENUE IN D.C. TO DEAL WITH CLAIMS
3 THAT ARISE OUT OF THAT.

4 IT OFTEN HAPPENS THAT PEOPLE HAVE PATENTS IN THE U.S.,
5 THEY DON'T DO BUSINESS ANYWHERE IN THE U.S., AND THEY GET SUED
6 IN D.C. IF YOU WANT TO INVALIDATE THE PATENT, THAT'S ONE WAY
7 THAT IT'S DONE.

8 THERE ARE ALSO PROCEEDINGS AT THE TRADEMARK OFFICE.

9 SO THEN IMAGINE YOU FILE THE INTENT TO USE, YOU START
10 USING, YOU GET YOUR REGISTRATION, AND IMAGINE A COMPANY THAT
11 HAS REGISTERED A TRADEMARK AND IS USING IT ONLY IN DELAWARE --
12 IT'S A FEDERAL REGISTRATION, BUT THEY'RE USING IT IN
13 DELAWARE -- AND THERE'S INFRINGEMENT IN CALIFORNIA. THEY CAN'T
14 COME TO CALIFORNIA AND GET INJUNCTIVE RELIEF IF THEY'RE NOT
15 USING IT IN CALIFORNIA.

16 SO IT WOULDN'T BE FAIR TO SAY THAT CALIFORNIA HAS
17 JURISDICTION OVER THEM WHEN THEY'RE NOT HERE AND THEY DON'T
18 HAVE TRADEMARK RIGHTS IN THE STATE OF CALIFORNIA BASED ON A
19 LACK OF USE HERE.

20 SO I THINK IT'S A COMPLICATED QUESTION AS TO WHEN
21 TRADEMARK RIGHTS TURN INTO SOMETHING THAT WILL CREATE
22 JURISDICTION.

23 BUT HERE THERE'S NO DECLARATORY JUDGMENT ISSUES. THERE'S
24 NO CEASE AND DESIST LETTERS. WE FILED AN INTENT TO USE, WE
25 ABANDONED, AND THEREFORE, JURISDICTION IN CALIFORNIA NEVER

1 ATTACHED TO OUR APPLICATION FOR LEGALFORCE. THAT'S THE ONE WE
2 ABANDONED.

3 WE DO HAVE ONE ON LEGALON, BUT THAT'S DIFFERENT.

4 THE COURT: DO YOU MIND IF I ASK THAT QUESTION, SINCE
5 IT'S THE SAME COUNSEL?

6 MR. MAKMAN: YEAH.

7 THE COURT: HOW DOES LEGALON TECHNOLOGY INCORPORATED
8 OBTAIN ITS FUNDING?

9 MR. MAKMAN: THE U.S. COMPANY HAS RECEIVED I THINK
10 THREE, THREE WIRE TRANSFERS FROM JAPAN THAT ARE -- AND THEY'RE
11 IN RETURN FOR SOLD SHARES IN THE U.S. COMPANY TO THE PARENT
12 COMPANY. THERE'S A COMPLEX WEB OF AGREEMENTS AND SHAREHOLDER
13 RIGHTS AND BOARD RIGHTS THAT -- YOU KNOW, IT'S A PROPERLY
14 GOVERNED CORPORATE ENTITY.

15 THE COURT: SO IN ITS MOST SIMPLISTIC TERMS, CAN --
16 WOULD IT BE WRONG FOR ME TO CONSIDER LEGALFORCE INCORPORATED AS
17 KIND OF THE PARENT AND LEGALON AS KIND OF THE OFFSPRING?

18 MR. MAKMAN: IT'S A WHOLLY OWNED SUBSIDIARY.

19 THE COURT: UM-HUM.

20 MR. MAKMAN: BUT THE WAY THE MONEY MOVES, WE SELL
21 SHARES, THEY SEND MONEY. ONCE WE SELL THE SHARES, THE MONEY IS
22 OURS, IS THE U.S. COMPANY'S, AND THE SHARES BELONG TO THE
23 JAPANESE COMPANY.

24 AND SO THEN YOU HAVE, OKAY, THE SHARED JAPANESE COMPANY
25 HAS SHAREHOLDER RIGHTS. THE CHAIRMAN OF THE BOARD IS THE

1 AMERICAN GUY AND HE HAS A DUTY TO THE U.S. ENTITY, NOT TO THE
2 JAPANESE ENTITY UNDER CORPORATE LAW, RIGHT, FIDUCIARY DUTY OF
3 THE CHAIRMAN OF THE BOARD TO THE COMPANY UNDER DELAWARE LAW.

4 AND WHEN I SAY IT'S A COMPLEX WEB, I MEAN THERE'S A
5 COMPLEX WEB, BUT IT'S THE ORDINARY CORPORATE STRUCTURE THAT YOU
6 HAVE FOR A PARENT AND SUBSIDIARY.

7 THE COURT: OKAY. AND IS THERE LITIGATION GOING ON
8 IN JAPAN BY CHANCE?

9 MR. MAKMAN: I BELIEVE THERE STILL IS. WE, WE --

10 MR. ABHYANKER: NOT YET.

11 MR. MAKMAN: THERE'S A MOTION TO DISMISS PENDING.

12 MR. ABHYANKER: THAT CASE HAS BEEN DECIDED --

13 THE COURT: ONE MOMENT. I DIDN'T ALLOW HIM TO
14 INTERRUPT YOU, AND YOU'LL BE ABLE TO CORRECT THE RECORD.

15 MR. MAKMAN: IT'S MY UNDERSTANDING THAT THERE'S A
16 MOTION TO DISMISS PENDING, BUT I DO NOT KNOW WHAT THE STATUS OF
17 THAT IS.

18 THE COURT: AND THEN JUST HUMOR ME FOR ONE MOMENT.
19 BECAUSE OF THIS RELATIONSHIP BETWEEN LEGALFORCE INCORPORATED
20 AND LEGALON, DOES LEGALON'S TRADEMARK PRESENT A LIKELIHOOD OF
21 CONFUSION BY USING THE TERM "LEGAL"?

22 MR. MAKMAN: I MEAN, I THINK -- OF COURSE NOT. I
23 DON'T THINK THAT'S A PLAUSIBLE ARGUMENT. THAT'S WHAT I'VE
24 ARGUED IN MY BRIEF.

25 GIVEN THAT WE'RE SELLING CONTRACT REVIEW SOFTWARE, IT'S ON

1 THE DESCRIPTIVE END OF THE SPECTRUM AND IS NOT ENTITLED TO --
2 IT'S NOT ENTITLED TO STRONG RIGHTS.

3 AND WHEN YOU TALK ABOUT MARKS AS A WHOLE, RECALL THAT HIS
4 PRODUCT IS A PIGGY BANK SOLD BY LEGALFORCE AND OURS IS AI
5 REVISE AND AI REVIEW FEATURES OF THE LEGALON TECHNOLOGY
6 SOFTWARE. SO IT'S A VERY DIFFERENT NAME.

7 THE COURT: SO EVEN THOUGH PLAINTIFF IS CONSIDERED
8 LEGALFORCE RAPC WORLDWIDE PC, AND THEN WE HAVE LEGALFORCE
9 INCORPORATED OUT OF JAPAN, AND THEN LEGALON HERE IN THE
10 UNITED STATES?

11 MR. MAKMAN: AND THE JAPANESE COMPANY HAS CHANGED ITS
12 NAME, AND SO THEY'RE BOTH CALLED LEGALON AT THIS POINT. THAT'S
13 WHY I'VE BEEN CALLING IT LEGALON JAPAN AND LEGALON U.S., A
14 WHOLLY OWNED SUBSIDIARY RELATIONSHIP. AND OBVIOUSLY I'LL ASK
15 FOR YOU TO CHANGE THE CAPTION IF THE CASE GOES FORWARD. BUT
16 GIVEN YOUR TENTATIVE, I'M HOPING IT WON'T.

17 I WOULD ALSO LIKE TO POINT OUT, BEFORE I FORGET,
18 PARAGRAPH 102 OF THE COMPLAINT IN THE LEGALON -- IN THE CASE
19 AGAINST LEGALON WHERE PLAINTIFF EXPLICITLY SAYS HE IS NOT
20 SEEKING REMEDIES AS A FAMOUS MARK UNDER DILUTION THEORY, ALL OF
21 HIS ARGUMENTS ON HARM TODAY ARE DILUTION ARGUMENTS, ARE
22 ARGUMENTS THAT THE POWER OF THE MARK IS DIMINISHED BECAUSE
23 THERE ARE OTHERS WITH SIMILAR MARKS IN THE SPACE.

24 THAT'S NOT WHAT HE'S ASSERTED IN THE CASE. THAT'S WHAT
25 HE'S EXPLICITLY WITHDRAWN. THE TICKER CASES ARE DILUTION

1 CASES. THE ELEMENTS OF DILUTION REQUIRE A FAMOUS MARK IN THE
2 FEDERAL STATUTE. THE STATUTES THAT HE'S ASSERTED ARE
3 DIFFERENT. THEY REQUIRE USE OF THE MARK ON GOODS AND SERVICES.

4 AND SO ONE OF THE PROBLEMS WITH THIS CASE, A, HE HASN'T
5 BEEN HARMED; B, HE WANTS A HUNDRED MILLION DOLLARS, AND IN
6 ORDER TO GET IT, HE'S CHANGING LEGAL THEORIES, HE'S A MOVING
7 TARGET. WE HAVE SIX COMPLAINTS SO FAR IN THIS ACTION, AND EACH
8 ONE IS MORE FARFETCHED THAN THE LAST.

9 WHEN WE TALK ABOUT EQUITY, THE IDEA THAT THE HUNDRED
10 MILLION DOLLARS THAT WAS INVESTED IN THE JAPANESE COMPANY CAN
11 SOMEHOW BE REDIRECTED AND GIVEN TO THE PLAINTIFF ON A TRADEMARK
12 THEORY, IT MAKES NO SENSE. WE'RE GOING TO HAVE TO CALL OUR
13 INVESTORS AND SAY, OH, SORRY, THE COURT RULED THAT BECAUSE THEY
14 HAVE A REGISTRATION ON LEGALFORCE, YOUR STOCK IS NOW WORTHLESS
15 AND ALL OF YOUR MONEY HAS BEEN GIVEN TO PLAINTIFF.

16 THAT'S NOT EQUITABLE AND THEY'RE NOT EVEN PARTIES TO THE
17 CASE, OUR INVESTORS. SO THAT -- THAT'S WHY THERE'S NO CASE
18 LIKE THAT.

19 THE COURT: READING BETWEEN THE LINES, IT APPEARS
20 THAT COUNSEL IS KIND OF ARGUING AN ALTER EGO THEORY, AND A
21 COUPLE OF QUESTIONS.

22 DID LEGALFORCE, NOW LEGALON JAPAN, COMINGLE ITS ASSETS
23 WITH LEGALON TECHNOLOGIES U.S.?

24 MR. MAKMAN: NO, THEY'RE NOT COMINGLED. AS I'VE
25 SAID, WE SOLD SHARES.

1 THE COURT: ALL RIGHT.

2 MR. MAKMAN: AND WE COULD DIG INTO THAT, BUT WE'VE
3 HAD A YEAR OF DISCOVERY, SPENT OVER A MILLION DOLLARS FIGHTING
4 OVER THIS MATTER, AND THERE'S NO EVIDENCE OF COMINGLING.

5 THE COURT: THIS IS TO MAKE SURE THE RECORD IS JUST
6 CLEAR.

7 MR. MAKMAN: SURE. SORRY.

8 THE COURT: IS LEGALFORCE JAPAN -- LEGALON JAPAN
9 RESPONSIBLE FOR LEGALON TECHNOLOGIES' DEBTS?

10 MR. MAKMAN: NO.

11 THE COURT: DOES LEGALON JAPAN AND LEGALON U.S.
12 DISPLAY AN IDENTICAL EQUITABLE OWNERSHIP?

13 MR. MAKMAN: I DON'T FULLY KNOW WHAT YOU MEAN BY
14 THAT.

15 BUT THEY ARE SEPARATELY INCORPORATED AND THEY ARE SELLING
16 DIFFERENT PRODUCTS TO DIFFERENT MARKETS WITH DIFFERENT
17 FEATURES. THEY ARE SORT OF A RELATED BASE OF CODE, BUT THEY
18 PRESENT TO THE WORLD AS PARENT AND WHOLLY OWNED SUBSIDIARY.

19 THE COURT: ALL RIGHT. DOES LEGALON JAPAN AND
20 LEGALON U.S. USE THE SAME OFFICES AND EMPLOYEES?

21 MR. MAKMAN: THEY DO NOT. THERE IS SOME -- THERE'S
22 SOME CROSS-POLLINATION, BUT THERE'S AN AGREEMENT THAT
23 ESTABLISHES WHAT SERVICE IS PROVIDED BY WHICH COMPANY TO
24 WHICH -- TO THE OTHER.

25 AND SO -- YEAH.

1 THE COURT: ALL RIGHT.

2 MR. MAKMAN: I EXPECT THAT'LL CHANGE OVER TIME AS
3 WELL. THEY'VE HIRED SOME ENGINEERS HERE NOW. THE OTHER
4 ENGINEERS WERE IN JAPAN, BUT IT'S A START-UP AND THINGS ARE
5 FLUID, RIGHT?

6 THE COURT: ALL RIGHT. STILL KIND OF WALKING THROUGH
7 THE ALTER EGO ARGUMENT --

8 MR. MAKMAN: SURE.

9 THE COURT: -- IS LEGALON JAPAN A SHELL OR CONDUIT
10 FOR LEGALON U.S.?

11 MR. MAKMAN: IS LEGALON JAPAN A SHELL FOR
12 LEGALON U.S.? NO.

13 THE COURT: ALL RIGHT. AND DOES LEGALON JAPAN -- I'M
14 NOT GOING TO ASK THAT QUESTION.

15 I'M EXTRACTING SOME QUESTIONS BASED ON SOME OF THE CASES.

16 MR. MAKMAN: YEAH, I UNDERSTAND.

17 THE COURT: DOES LEGALON JAPAN AND LEGALON U.S.
18 DISREGARD ANY CORPORATE FORMALITIES, SEGREGATE THE CORPORATE
19 RECORDS, OR HAVE IDENTICAL OFFICERS AND DIRECTORS? I KNOW
20 THAT'S A COMPOUND QUESTION, BUT --

21 MR. MAKMAN: YEAH, AND, YOU KNOW, ONE CAN'T
22 ABSOLUTELY STATE 100 PERCENT NO.

23 BUT THEY'RE IN -- THEY'RE DOING THEIR BEST TO COMPLY WITH
24 THE LAW, AND THERE IS NO -- AND THAT'S WHY I FOCUSSED ON HARM.
25 IF YOU WANT TO PIERCE THE VEIL, YOU'VE GOT TO SHOW THAT THERE'S

1 AN EQUITABLE REASON FOR THAT, THAT SOME HARM IS COMING OUT OF
2 THE CORPORATE -- OF THE USE OF THE CORPORATE -- I DON'T HAVE TO
3 PROVE PERFECTION IN MY IMPLEMENTATION OF THE CORPORATE FORM. I
4 HAVE TO DO IT IN GOOD FAITH, WHICH WE'VE CERTAINLY DONE, AND
5 WE'VE DONE IT VERY WELL. THE JAPANESE COMPANY WAS FOUNDED BY A
6 LAWYER AND OUR CEO HERE WENT TO LAW SCHOOL, SO THEY'RE AS GOOD
7 AS I'VE SEEN ON THAT.

8 THE COURT: ALL RIGHT.

9 AND THEN FEEL FREE TO TAKE A GLANCE AT MY ORIGINAL
10 QUESTIONS THAT WERE SENT TO EACH OF YOU, AND WITH REGARDS TO
11 THE EVIDENCE THAT WAS PROFFERED BY THE PLAINTIFF, I'M GOING TO
12 GIVE EACH SIDE TWO AND A HALF MORE MINUTES FOR THOSE QUESTIONS,
13 AND THEN WE'LL CONCLUDE THIS HEARING.

14 MR. ABHYANKER: YOUR HONOR, BEFORE THAT, MAY I HAVE A
15 CHANCE TO RESPOND TO THE --

16 THE COURT: YOU WILL. ONE MOMENT.

17 WAS THERE ANYTHING WITH REGARDS TO ANY OF THE EVIDENCE
18 THAT WAS PROFFERED BY COUNSEL THAT YOU WOULD LIKE TO ADDRESS ON
19 THE DEFENSE SIDE?

20 MR. MAKMAN: I MEAN, I THINK MY PAPERS HAVE ADDRESSED
21 WHAT I WANTED TO ADDRESS, AND I -- YOU KNOW, SO --

22 THE COURT: THE PAPERS ARE FINE AS FAR AS YOU ARE
23 CONCERNED?

24 MR. MAKMAN: YEAH.

25 THE COURT: ALL RIGHT.

1 COUNSEL, YOU MAY PROCEED.

2 MR. ABHYANKER: SO FIRST, YOUR HONOR, THE TRADEMARK
3 HE'S MENTIONING WAS ABANDONED LITERALLY SEVEN OR EIGHT MONTHS
4 AFTER THIS LAWSUIT WAS STARTED. SO AT THE TIME OF FILING THE
5 COMPLAINT, THE TRADEMARK WAS ACTIVE.

6 NUMBER TWO, WE HAVE ALLEGED WE'VE SUFFERED SIGNIFICANT
7 HARM. WE WERE SEEKING INVESTMENT FROM THE SAME VC,
8 SEQUOIA CAPITAL, THEY INVESTED IN THEIR COMPANY, NOT OURS, IN
9 2022.

10 WE'VE ALLEGED THE FACT THAT IT WEAKENS OUR ASSOCIATION
11 BETWEEN OUR GOODS AND SERVICES AND THE REPUTATION AND QUALITY
12 OF OUR MARK BECAUSE ALLEGEDLY THEY TOOK IT LEGALLY.

13 NUMBER THREE, WITH RESPECT TO THE OFFSPRING ISSUE, WE HAVE
14 EXTENSIVELY SHOWN TESTIMONY FROM THE ACTUAL DEPOSITIONS THAT DO
15 NOT NEED TO BE SUMMARIZED HERE WHICH SHOWS THAT THESE COMPANIES
16 ARE ONE AND THE SAME.

17 FIRST OF ALL, THE -- TWO OF THE THREE BOARD OF DIRECTORS
18 ARE THE OFFICERS OF THE PARENT COMPANY.

19 MR. J.P. BIARD, WHO'S THE HEAD OF THE JAPANESE OPERATIONS,
20 SHOWS IN HIS LINKEDIN PROFILE ASSIGNMENT SIMULTANEOUSLY
21 EMPLOYED BY THE U.S. COMPANY.

22 THE LEASE THAT THEY HAVE IN THE U.S. IS PAID FOR BY THE
23 JAPANESE COMPANY.

24 ALL THE FUNDS THEY GET IS TRANSFERRED WHENEVER THEY NEED
25 IT FROM THE JAPANESE COMPANY AND NOBODY ELSE.

1 THEY HAVE, YOU KNOW, OFFICERS THE SAME, THEY HAVE OFFICE
2 SPACE THE SAME, THEY HAVE -- EVEN THE U.S. EMPLOYEES HAVE NO
3 SHARES IN THEIR OWN COMPANY, THEIR SHARES ARE IN THE JAPANESE
4 COMPANY.

5 SO THIS IS CLEARLY THE MOST CLEAR EVIDENCE TO SHOW THAT
6 THERE'S NO FACTS TO SUPPORT.

7 LASTLY, WE TALKED ABOUT THE FAMOUS MARKS. THE CASE LAW --

8 THE COURT: SLOW DOWN JUST A LITTLE BIT, COUNSEL.
9 WHEN I HEAR NOISE FROM THE COURT REPORTER, IT GIVES ME PAUSE.
10 SLOW DOWN AND TAKE A BREATH.

11 MR. ABHYANKER: WELL, MAXNET, THE CASE WE CITED,
12 MAXNET, WHICH IS A 2020 CASE, IS NOT A FAMOUS MARK.

13 THERE'S NO ISSUE THAT THOSE MARKS HAVE BEEN DEEMED FAMOUS
14 MARKS.

15 THE FACT THAT MAYBE THERE'S AN ALLEGATION THAT SOME OF
16 THEM WERE FAMOUS HAS NOTHING TO DO WITH WHETHER OR NOT THE
17 TICKER SYMBOL USED IS A SOURCE CONFUSION IDENTIFIER TO
18 POTENTIAL CONSUMERS IN THE FUTURE.

19 SO WE BELIEVE WE'VE SUFFERED SIGNIFICANT HARM, AND WE'RE
20 SEEKING MONEY FROM THE SAME VC'S, WE WERE -- YOU KNOW, I DON'T
21 KNOW HOW BETTER TO PUT IT THAN THE OWN TESTIMONY OF ITS OWN
22 OFFICERS OF THIS DEFENDANT, AND WE HAVE CLEARLY BRIEFED THAT,
23 PROVIDED EVIDENCE IN OUR OPPOSITION WITH DIRECT QUOTES FROM
24 THOSE OPPOSITIONS -- FROM THOSE DEPOSITION TRANSCRIPTS.

25 THE COURT: OKAY. AND BECAUSE THE CASES ARE

1 BACK-TO-BACK, THE LEGALFORCE AND LEGALON, IS THERE ANYTHING YOU
2 WOULD LIKE TO SHARE WITH REGARDS TO LEGALON? I THINK MOST OF
3 MY QUESTIONS THAT PERTAIN TO LEGALON HAVE BEEN ANSWERED, BUT I
4 DON'T WANT TO PRECLUDE YOU FROM COMMENTING ON THAT CASE IN THE
5 EVENT THAT YOU THINK THAT THERE WAS SOME AREA THAT WAS OMITTED.

6 COUNSEL FOR THE PLAINTIFF?

7 MR. ABHYANKER: YES, ONE MORE THING.

8 THE JAPANESE CASE IS DISMISSED. IT'S A FRIVOLOUS CASE,
9 AND THE JAPANESE COURT BASICALLY LAUGHED IT OUT OF COURT. IT
10 IS --

11 THE COURT: DO YOU HAVE ANYTHING THAT CAN BE LODGED
12 WITH THE COURT THAT REFLECTS THE DISMISSAL?

13 MR. ABHYANKER: WELL, WE CAN, YES. I'LL HAVE TO GET
14 IT FROM THE JAPANESE COUNSEL. THAT'S MY UNDERSTANDING. IT'S
15 IN JAPANESE. THEY JUST HAD A HEARING AND IT WAS DISMISSED.

16 THE COURT: WHAT DATE WAS THE HEARING BY CHANCE?

17 MR. ABHYANKER: I DON'T HAVE IT MEMORIZED. I DON'T
18 WANT TO MISSTATE MYSELF, YOUR HONOR.

19 THE COURT: ALL RIGHT. THAT'S FAIR.

20 MR. ABHYANKER: I BELIEVE IT WAS IN AUGUST.

21 THE COURT: ANYTHING ELSE YOU'D LIKE TO ADD THAT THE
22 COURT SHOULD CONSIDER IN TAKING THE REMAINDER OF THE TWO
23 MOTIONS UNDER SUBMISSION?

24 MR. ABHYANKER: YOUR HONOR, I THINK THIS CASE
25 PRESENTS SOME UNIQUE OPPORTUNITIES FOR THE COURT, AND I ADMIT

1 THAT THERE'S NOT CLEAR CASE LAW. BUT WE HAVE A, A REAL DISPUTE
2 HERE, WE HAVE REAL HARM HERE THAT WE'VE SUFFERED.

3 AND IF SOMEONE WAS TO EXPLAIN THIS TO A NON-LAWYER, IT
4 WOULD SEEM UNFAIR. THERE'S A FUNDAMENTAL ISSUE OF FAIRNESS
5 THAT DOES NOT SEEM THAT IS BEING TAKEN INTO CONSIDERATION.

6 AND I THINK THE CASE LAW DOES SUPPORT OUR CONTENTIONS WITH
7 RESPECT TO THE USE IN COMMERCE. I THINK THERE WAS A
8 MISSTATEMENT THAT IT HAS TO BE AFFIXED. IT DOESN'T HAVE TO BE
9 AFFIXED, UNDER 15 U.S.C. 1127, TO GOODS AND SERVICES.

10 WE HAVE -- WE HAVE EXPLAINED CLEARLY, BESIDES THE HARMS,
11 THE SPECIFIC JURISDICTION, BECAUSE OF THE FACT THAT THEY FILED
12 A DECLARATION, A VERIFIED STATEMENT WITH THE FEDERAL COURT, AND
13 THEY HAVE NO AUTHORITY TO CHALLENGE THAT.

14 SO THAT'S IT WITH RESPECT TO THE JAPANESE DEFENDANT.

15 WITH RESPECT TO LEGALON AND LEGALFORCE, THE ISSUE ISN'T
16 THE WORD "LEGAL." THERE'S PLENTY OF TRADEMARKS THAT HAVE THE
17 WORD "LEGAL." WE'RE NOT DISPUTING THAT THEY COULD USE THE WORD
18 "LEGAL" IF THEY WANTED TO IF THEY WERE AN INDEPENDENT COMPANY
19 AND HAD NO PRIOR HISTORY.

20 HERE THE MARK THAT WE'RE TRYING TO SAVE IS NOT JUST THE
21 WORD "LEGAL." THEY HAVE A DESIGN MARK, WHICH HAS A DESIGN
22 WHICH THEY HAVE NOW ADMITTED, AND AT LEAST AS WE PROVIDED THE
23 DECLARATIONS FOR, DERIVES PARTLY FROM THE PREVIOUS ONE, WHICH
24 IS A POLYGON SHAPE THAT HAD AN "L" IN IT.

25 SO THE INTENTION OF THEM TO ACTUALLY CREATE THAT NAME WAS

1 NOT FOR SOME KIND OF INNOCENT PURPOSE. IT WAS CREATED TO
2 CREATE A FALSE ASSOCIATION WITH US OR THEM, BETWEEN THEM AND
3 THEIR PRIOR NAME, AND THAT IS THE ISSUE HERE.

4 SO IT'S VERY DIFFERENT TO SAY THAT THERE'S A COMPANY THAT
5 EXISTS THAT USES THE WORD "LEGAL" AND, THEREFORE, THEY SHOULD
6 BE ABLE TO USE IT, VERSUS ONE THAT HAS INTENTIONALLY TRIED TO
7 MANIPULATE THE PRIOR NAME IN MANNERS THAT STILL OBSCURE THE
8 CONNECTION WITH THE NAME BEING ASSESSED -- ALLEGED TO BE
9 INFRINGING.

10 AND, THEREFORE, WITH RESPECT TO THIS PARTICULAR DEFENDANT,
11 APART FROM THE ARGUMENTS WE HAVE WITH THE WORD "ON," WHICH WE
12 CAN GET AN EXPERT TO OPINE ON, WE DON'T BELIEVE THAT THERE IS A
13 CLEAR ARGUMENT HERE THAT SUPPORTS THAT NO REASONABLE JURY
14 CANNOT FIND THAT THERE'S INFRINGEMENT BETWEEN LEGALON AND
15 LEGALFORCE IN THIS CASE.

16 THE COURT: THANK YOU.

17 AND FOR PURPOSES OF MY COURT REPORTER, MY APOLOGIES, I
18 DIDN'T HAVE OUR COURTROOM DEPUTY PROVIDE A MARKER, WE'RE NOW
19 DISCUSSING 22-CV-07627, WHICH IS LEGALFORCE RAPC WORLDWIDE PC,
20 VERSUS LEGALON TECHNOLOGIES INCORPORATED.

21 BECAUSE THE ARGUMENTS ARE SOMEWHAT INTERRELATED AND
22 INTRARELATED, I ALLOWED COUNSEL TO ARGUE BOTH DURING THIS
23 HEARING. BUT I REALIZE I MAY NEED TO SEGREGATE THE MARK OF
24 WHEN WE COLLAPSED INTO THE SECOND CASE, AND MY PROFUSE
25 APOLOGIES.

1 COUNSEL, NOW THAT I'VE PROVIDED THAT CLARITY -- AND THIS
2 IS WITH RESPECT TO THE DOCKET THAT WAS NAMED ECF 77, 78, 79,
3 AND 82, ANYTHING THAT YOU WOULD LIKE TO ADD TO RESPOND? YOUR
4 EARLIER 15 MINUTES EXPIRED AS TO THE PREVIOUS CASE, BUT YOU'RE
5 NOW ALLOWED TO ADDRESS THIS CASE.

6 MR. MAKMAN: I JUST HAD A FEW THINGS I WOULD SAY IN
7 RESPONSE TO WHAT HE JUST SAID. I DON'T KNOW WHICH CASE THIS IS
8 IN NECESSARILY.

9 THE COURT: PREFACE WHICH ONE YOU'RE SPEAKING OF SO
10 THAT WE HAVE A REALLY CLEAR RECORD, AND THAT'S MY ERROR.

11 MR. MAKMAN: WILL DO.

12 SO ONE OF THE THINGS I WOULD NOTE IS THAT THE COMMENT
13 ABOUT THE LEASE BEING PAID BY JAPAN IS NOT CORRECT.

14 ANOTHER WOULD BE ON -- THE CORE ISSUE, AGAIN, HERE IS LACK
15 OF HARM. IN THE ARGUMENT WE JUST HEARD, COUNSEL CITED
16 15 U.S.C. SECTION 1127, WHICH IS NOT ASSERTED IN EITHER ACTION.

17 WITH REGARDS TO THE SALE OF SHARES, HE SAID HE COULD HAVE
18 SOLD TO SEQUOIA. THE SEQUOIA SALE WAS IN JAPAN, AND I HAVE A
19 DOCUMENT I WOULD READ. HE SERVED A SUBPOENA ON THIS IN
20 DECEMBER OF LAST YEAR, WHICH I WAS NOT AWARE OF BECAUSE I WAS
21 NOT ON THE CASE, BUT I FOUND IT WHILE I WAS WORKING FOR THIS
22 HEARING, AND IT SAYS, "THIS FIRM REPRESENTS SEQUOIA CAPITAL
23 OPERATIONS IN CONNECTION WITH THE SUBPOENA ISSUED IN THE
24 ABOVE-REFERENCED MATTER. IN RESPONSE TO THE SUBJECT SUBPOENA,
25 OUR CLIENT'S SEARCH HAS PRODUCED NO DOCUMENT AND NO

1 ELECTRONICALLY STORED INFORMATION IN OUR CLIENT'S POSSESSION,
2 CUSTODY, OR CONTROL."

3 SO THERE'S NOTHING IN THE AMERICAN ENTITY THAT RELATES TO
4 THIS INVESTMENT ACCORDING TO THE RESPONSE TO THE SUBPOENA THAT
5 HE RECEIVED BACK IN DECEMBER OF LAST YEAR.

6 AND BEYOND THAT, I THINK I HAVE SAID WHAT I NEED TO SAY.

7 WE DID GO THROUGH THE SLEEKCRAFT FACTORS IN THE LEGALON
8 CASE, AND INTENT IS ONLY ONE OF THEM. THEY WERE SELLING TO
9 SIGNIFICANTLY DIFFERENT CUSTOMERS, THE SOPHISTICATED CUSTOMERS.
10 THE SIMILARITY IS NOT GREAT.

11 AND I DO NOT CONSIDER THE CLAIM OF INFRINGEMENT PLAUSIBLE.
12 THE ONLY OVERLAP IS THE WORD "LEGAL," AND THE HISTORY AND TO
13 THE EXTENT THAT THERE'S BEEN KIND OF FOREIGN USE OF THE WORD
14 "LEGALFORCE" UNDER THE ABITRON CASE IS NOT RELEVANT TO AND IS
15 NOT A HARM. THAT CASE EXPLICITLY DISCUSSES THE FACT THAT
16 FOREIGN CONDUCT IS NOT A HARM TO A U.S. TRADEMARK PROPERTY
17 RIGHT.

18 THAT'S -- SO THAT'S WHAT I HAVE TO SAY.

19 THE COURT: AND THE COURT NOTED THAT COUNSEL HAD SAID
20 THAT FOR SEVEN TO EIGHT MONTHS, IT WAS BEING USED AND THEN
21 ABANDONED IN TERMS OF ITS DESIGNATION.

22 DO YOU CONCEDE THAT?

23 MR. MAKMAN: NO. NO. WE FILED A -- WE FILED AN
24 INTENT TO USE THING, APPLICATION. THAT MEANS WITHIN SIX
25 MONTHS, YOU HAVE TO EITHER EXTEND OR FILE EVIDENCE OF USE.

1 THE COURT: OKAY.

2 MR. MAKMAN: SO WE DIDN'T USE, WE DIDN'T FILE, IT
3 WENT ABANDONED.

4 THE COURT: THANK YOU. I JUST WANTED TO MENTION THAT
5 SINCE IT WAS BROUGHT UP IN HIS SHORT REBUTTAL ARGUMENT.

6 MR. MAKMAN: SURE.

7 THE COURT: ANYTHING FURTHER BEFORE WE CONCLUDE THIS
8 HEARING?

9 AND AS IT RELATES TO 22-CV-03724, WE'RE SPEAKING OF
10 ECF 95, 100, AND 106.

11 MR. ABHYANKER: YOUR HONOR, SO FIRSTLY, THE ISSUE OF
12 WHETHER THE JAPANESE COMPANY PAYS THE RENT FOR THE
13 SAN FRANCISCO ENTITY, THERE'S A DIRECT QUOTE, I CAN'T
14 PARAPHRASE IT, IT'S IN THE ATTACHMENTS THAT ARE FROM
15 TRANSCRIPTS FROM MR. BIARD.

16 APART FROM THAT, YOU KNOW, IT'S NOT CORRECT THE WAY HE'S
17 DESCRIBING HOW TRADEMARK LAW WORKS. I'M A TRADEMARK ATTORNEY.
18 I DON'T -- IT'S NOT THE FACT THAT YOU FILE AN INTENT TO USE
19 MARK AND WITHIN SIX MONTHS YOU PROVIDE PROOF OF USE.

20 YOU FILE AN INTENT TO USE MARK. THE U.S. GOVERNMENT
21 EXAMINES THAT MARK, THEY ISSUE OFFICE ACTIONS AGAINST THAT
22 MARK, YOU GET A NOTICE OF ALLOWANCE, AND THAT STARTS A 30 DAY
23 OPPOSITION FOR IT.

24 SO AT THAT -- ALONG THAT ENTIRE JOURNEY, THERE IS NO
25 REPRESENTATION TO THE GOVERNMENT THAT THEY'VE SIMPLY JUST FILED

1 THE DOCUMENT AND INTENDED TO NEVER USE IT. SO HE
2 MISCHARACTERIZES HOW THAT WORKS IN TERMS OF THE U.S. POLICY AND
3 PROCEDURE OF THE U.S. PTO.

4 THERE'S A SWORN DECLARATION THAT THEY HAVE AN INTENT TO
5 USE, OR THERE'S A SWORN DOCUMENT THAT IS REPRESENTED TO THE
6 GOVERNMENT, AND THAT WAS NOT WITHDRAWN UNTIL I BELIEVE FEBRUARY
7 OF THIS YEAR.

8 THIS LAWSUIT WAS FILED IN JUNE OF LAST YEAR, I BELIEVE,
9 RIGHT, JUNE OF LAST YEAR. SO THIS IS AN OLDER CASE.

10 AND YOU CAN'T JUST ESCAPE THE LAWSUIT BECAUSE DURING THE
11 LAWSUIT YOU DECIDE, WELL, I'M GOING TO START MAKING CORRECTIVE
12 ACTION. YOU CAN MITIGATE THE HARM, BUT YOU CAN'T ERASE THE
13 DAMAGES CAUSED, AND WE DO HAVE SIGNIFICANT DAMAGES.

14 REPUTATIONAL HARM IS A REAL THING WHEN THE OTHER PARTY
15 THAT IS A DEFENDANT IS USING YOUR MARK IN WAYS THAT DAMAGE A
16 PLAINTIFF'S REPUTATION, AND THAT QUANTIFICATION CANNOT BE DONE
17 ALONE IN A VACUUM. IT NEEDS TO BE DONE THROUGH THIS.

18 THE COURT: THANK YOU.

19 MATTER SUBMITTED?

20 MR. MAKMAN: CAN I RESPOND TO THE APPLICATION FOR
21 JUST A MOMENT?

22 THE COURT: BRIEFLY.

23 MR. MAKMAN: VERY BRIEFLY, SURE.

24 SO THE -- AND THE USE QUESTION WAS ABOUT WHETHER FILING
25 THE APPLICATION CREATED JURISDICTION IN CALIFORNIA. IT'S AN

1 INTENT TO USE, NOT ACTUAL USE, AND HIS ARGUMENT THERE WAS THAT
2 HE WAS HARMED BY ACTUAL USE BASED ON A CLAIM OF AN INTENT TO
3 USE. THAT DOESN'T MAKE SENSE LOGICALLY.

4 MR. ABHYANKER: YOUR HONOR, IF YOU LOOK AT THE
5 TRANSCRIPTS FROM THE LAST HEARING, DEFENSE COUNSEL WAS ASKED
6 WHEN THEY CHANGED THE NAME AND STOPPED USING THE MARK. IF I
7 RECALL CORRECTLY, THEY ONLY STOPPED USING THE MARK AND CHANGED
8 IT IN JANUARY OR FEBRUARY OF THIS YEAR.

9 SO THAT'S INCONSISTENT WITH THE PRIOR REPRESENTATIONS THAT
10 DEFENDANT'S COUNSEL HAS MADE TO THIS COURT.

11 THE COURT: ALL RIGHT. THE MATTER IS NOW SUBMITTED.

12 MR. MAKMAN: THANK YOU.

13 THE COURT: IT WAS A PLEASURE SEEING YOU BOTH. AND
14 AS YOU KNOW, THE COURT'S RULING WILL ISSUE WITHIN A WEEK FROM
15 TODAY.

16 THANK YOU.

17 MR. ABHYANKER: THANK YOU, YOUR HONOR.

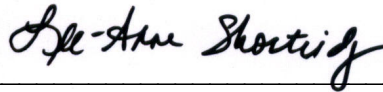
18 THE COURT: THANK YOU.

19 (THE PROCEEDINGS WERE CONCLUDED AT 2:46 P.M.)
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR
CERTIFICATE NUMBER 9595

DATED: DECEMBER 29, 2023